IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 223 of 1995

For Approval and Signature: sd/-

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHRENIK CHAMPAKLAL SHAH

Versus

JAGDISH CHAMPAKLAL SHAH

Appearance:

1. Appeal from Order No. 223 of 1995

MR KS NANAVATI for Petitioner No. 1

MR MIHIR H JOSHI for Petitioner No. 1

MR YN OZA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 18/10/2001

ORAL JUDGEMENT

1. Against the ad.interim order dated 27.3.1995

passed by the learned trial Judge below Notice of Motion in Civil Suit No.1866 of 1995 this Appeal is filed. It was admitted on 25.7.1996. Along with this Appeal, Civil Application No.2196 of 1995 was filed for interim relief. On 5.5.1995 learned Single Judge of this Court while adjourning that Civil Application to 22.6.1995 stayed the operation of the impugned order passed by the trial Court to the extent that Stock Exchange, Ahmedabad, and its governing body were permitted to deal with the nomination submitted by the appellant - original defendant No.2 and thereafter to refer the matter to the Security Exchange Board of India (SEBI) for being dealt with in accordance with law. The respective Authorities were permitted to take appropriate decision in accordance with Rules and Law. It was made clear that any decision taken during the pendency of the Appeal from Order will be subject to the result of the main Appeal.

2. Thereafter the present respondent No.1 - original plaintiff filed Civil Application No.2600 of 1995 in aforesaid Civil Application No.2196 of 1995 for modifying/vacating the aforesaid interim order passed by this Court. Shri Mihir Joshi, learned Counsel appearing for the appellant in this Appeal made a statement before the learned Single Judge of this Court at the time of hearing of Civil Application No.2600 of 1995 that the Card of the Ahmedabad Stock Exchange will not be transferred by the appellant during the pendency of this Appeal.

3. Today, at the time of hearing of this Appeal the learned Counsel Shri Mihir Joshi appearing for the appellant and Shri Unwala appearing for Shri Y.N.Oza for the respondent No.1 jointly submitted that this Appeal is arising out of the ad.interim order passed by the trial Court below Notice of Motion in Civil Suit No.1866 of 1995 and the interim order is operative in favour of the appellant since long. Therefore, instead of directing the trial Court to decide Notice of Motion, the trial Court be directed to decide the main Civil Suit No.1866 of 1995 as early as possible and till then the interim order passed by this Court on Civil Application No.2196 of 1995 be continued. However, learned Counsel Shri Mihir Joshi for the appellant made one more request that the appellant - original defendant No.1 be permitted to make appropriate application before the trial Court for transfer of the Card with the change in the circumstances. However, learned Counsel shri Unwala for the respondent No.1 submitted that once he has made statement before this Court then it would not be open to the trial Court to pass any other order in that behalf.

4. Having regard to the peculiar facts and circumstances of the case this Appeal is disposed of without going into the legality and validity of the impugned order passed by the trial Court with a direction to the trial Court to decide the main Civil Suit No.1866 of 1995 as early as possible and not later than 31st March, 2003. Till then the interim order passed by this Court on Civil Application No.2196 of 1995 shall continue.

5. If it is permissible under law then the Appellant - original defendant No.1 can make appropriate application before the trial Court regarding transfer of the Card during pendency and final disposal of the Suit. As and when such Application is filed before the trial Court it is always open to the respondent No.1 - original plaintiff to oppose such prayer. Such Application shall be decided by the trial Court strictly in accordance with law.

with these observations and directions this Appeal is disposed of.

Civil Application Nos.2600 of 1995 and 2196 of 1995 are disposed of in terms of the order passed in the main Appeal if so far they are not disposed of.

sd/-

Date : October 18, 2001 (B.J.Shethna, J.)

sas